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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MEGAN C.,

9 Plaintiff,

Case No. C19-5617-MLP

10 v.

ORDER

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13
14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
16 and Disability Insurance Benefits. Plaintiff contends that evidence submitted to the Appeals
17 Council undermines the decision of the administrative law judge (“ALJ”), and that the ALJ’s
18 decision also erroneously discounted a medical opinion and Plaintiff’s testimony. (Dkt. # 18 at 1-
19 2.) As discussed below, the Court REVERSES the Commissioner’s final decision and
20 REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. §
21 405(g).

22 **II. BACKGROUND**

23 Plaintiff was born in 1984, has a college degree and additional training in management
and mediation and has worked as a customer service associate, maintenance dispatch

1 coordinator, recruiting assistant, and shipping associate. AR at 306. Plaintiff was gainfully
2 employed up until a few weeks before the administrative hearing, when she was hospitalized for
3 a staph infection. *Id.* at 37.

4 In May 2016, Plaintiff applied for benefits, alleging disability as of March 20, 2016. AR
5 at 281-82, 284-89. Plaintiff's applications were denied initially and on reconsideration, and
6 Plaintiff requested a hearing. *Id.* at 210-18, 224-47. After the ALJ conducted a hearing on April
7 5, 2018 (*id.* at 85-134), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 30-42.

8 Utilizing the five-step disability evaluation process,¹ the ALJ found:

9 Step one: Plaintiff has not engaged in substantial gainful activity since the alleged onset
10 date.

11 Step two: Plaintiff's obesity, anxiety, mood disorder, depression, and status post motor
12 vehicle accident with fracture and impingement are severe impairments.

13 Step three: These impairments do not meet or equal the requirements of a listed
14 impairment.²

15 Residual Functional Capacity: Plaintiff can perform medium work that is low stress,
16 "meaning that it consists of simple, routine tasks, and does not require more than
17 occasional, superficial interaction with the general public or co-workers."

18 Step four: Plaintiff cannot perform past relevant work.

19 Step five: As there are jobs that exist in significant numbers in the national economy that
20 Plaintiff can perform, Plaintiff is not disabled.

21 AR at 30-42.

22 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
23 Commissioner's final decision. AR at 1-7. Plaintiff appealed the final decision of the
Commissioner to this Court. (Dkt. # 1.)

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 at 36. Next, the ALJ noted Plaintiff “had therapy with Dr. Stephens for six months and did not
2 see him at all in 2017, which suggests that her conditions were not particularly bothersome.” *Id.*

3 The ALJ also mentioned Plaintiff’s purported gap in therapy when assessing the opinion
4 of examining psychologist Curtis Greenfield, Psy.D.: the ALJ indicated that “within a few
5 months (of Dr. Greenfield’s examination), the claimant stopped treatment with Dr. Stephens,
6 indicating the degree of limitation opined by Dr. Greenfield did not persist.” AR at 38.

7 The ALJ went on to discuss Plaintiff’s gap in treatment again later in the decision, when
8 discussing evidence purportedly signed by Dr. Stephens in 2018:

9 Dr. Stephens did not see claimant again for more than a year, just prior to her
10 disability hearing and when the claimant became aware of [the] date of her
11 disability hearing ([AR at 790]). When the claimant was asked why at the hearing,
12 she had no idea. Cessation of treatment indicates that her conditions were not
13 particularly bothersome. . . . The claimant[’s] resumption of treatment could have
14 been because of recent worsening or because of her upcoming disability hearing.
15 These opinions are given little weight because they are inconsistent with the
16 degree of limitation from conditions that [were] asserted to have persisted
17 throughout [the] period at issue.

18 AR at 39.

19 Plaintiff submitted Dr. Stephen’s notes for February-October 2017 therapy sessions (AR
20 at 68-75) to the Appeals Council, which found that this evidence “does not show a reasonable
21 probability that it would change the outcome of the decision.” *Id.* at 2.

22 Plaintiff’s opening brief argues that the 2017 therapy notes warrant a remand under
23 sentence four and/or³ sentence six. The Court finds that because the ALJ repeatedly referred to a
purported gap in treatment in 2017 in the decision, as a reason to discount Plaintiff’s allegations

³ The Commissioner correctly notes that a claimant cannot obtain a remand under both sentence four and sentence six of 42 U.S.C. § 405(g). (Dkt. # 19 at 7.) Plaintiff contends that she argued in the alternative (dkt. # 20 at 1), but the use of “and/or” in the Opening Brief suggested that Plaintiff believed a remand under sentence four *and* sentence six was possible. The Reply Brief appears to clarify that Plaintiff argues that sentence four is the proper remand vehicle under the facts of this case. (Dkt. # 20 at 2.)

1 of disabling mental symptoms and opinions from Drs. Greenfield and Stephens, the existence of
2 the 2017 therapy notes undermines those portions of the ALJ's decision. *See Brewes v. Comm'r*
3 *of Social Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012) (“[W]hen the Appeals Council
4 considers new evidence in deciding whether to review a decision of the ALJ, that evidence
5 becomes part of the administrative record, which the district court must consider when reviewing
6 the Commissioner's final decision for substantial evidence.”).

7 With regard to Dr. Greenfield's opinion, the Court acknowledges that the ALJ did not
8 rely solely on the gap in treatment when discounting the opinion: the ALJ also found that Dr.
9 Greenfield's June 2016 opinion was undermined by Plaintiff's self-report to Dr. Greenfield “that
10 she was not under the care of a physician, inconsistent with treatment notes from Dr. Stephens.”
11 AR at 38 (referencing *id.* at 773). But Dr. Stephens is not a physician, he is a psychologist, and
12 Plaintiff saw chiropractors and massage therapists (also non-physicians) for her physical
13 problems until November 2016. *See id.* at 632; 20 C.F.R. §§ 404.1502(a)(1)-(2), 416.902(a)(1)-
14 (2) (listing physicians and psychologists as separate categories of medical sources). It is not clear
15 from the context of Dr. Greenfield's notes if Plaintiff was referring to her lack of treatment with
16 a physician for her mental or her physical conditions, but in neither case would the record
17 support the ALJ's finding that Plaintiff's report to Dr. Greenfield was inaccurate. Accordingly,
18 because both of the ALJ's reasons to discount Dr. Greenfield's opinion are invalid, the ALJ's
19 decision lacks the support of substantial evidence on that point.

20 To the extent that the ALJ cited additional reasons beyond the gap in treatment to explain
21 why he discounted other medical opinions and Plaintiff's testimony (as emphasized by the
22 Commissioner), the Appeals Council evidence may not deprive the ALJ's decision of the support
23 of substantial evidence in those respects, but because this case must be remanded based on the

1 error with regard to Dr. Greenfield's opinion, the ALJ will nonetheless have the opportunity to
2 reconsider the entire decision in light of the updated record, including the 2017 MRI and Dr.
3 Stephens' 2017 treatment notes.

4 **V. CONCLUSION**

5 For the foregoing reasons, the Commissioner's final decision is REVERSED and this
6 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
7 405(g). On remand, the ALJ should update the record and reconsider the assessment of Dr.
8 Greenfield's opinion and any other part of the decision as necessary, in light of an updated
9 record.

10 Dated this 24th day of February, 2020.

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13 MICHELLE L. PETERSON
14 United States Magistrate Judge
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